A **TANG PENG HUAT & ANOR v. TAN BOON CHONG & ANOR**

COURT OF APPEAL, PUTRAJAYA
ABDUL WAHAB PATAIL JCA
AZIAH ALI JCA
LIM YEE LAN JCA
B [CIVIL APPEAL NO: J-02-2401-09-2011]
13 JANUARY 2015

LAND LAW: *Sale of land – Trust – Transfer of ownership – Agreement that portion of land purchased by appellants would be registered under names of* C *respondents – Appellant paid for quit rent and applicable charges – Respondents refused to transfer ownership to appellants after sub-division – Whether land belonged to respondents – Deed of assignment – Whether contravened s. 214 of National Land Code – Whether respondents beneficial owner of land or bare trustees – Whether payment of quit rent and applicable charges could give title to appellants*

D The present appeal arose from the decision of the High Court in dismissing the appellants' claim against the respondents for the transfer of ownership of a piece of land ('PTD 17330') to the appellants. PTD 17330 was originally part of a piece of land known as Lot 380. Low Lin Aik ('LLA') and Tan Moi Hong ('TMH') purchased a portion of Lot 380 and each held half undivided E shares. *Via* a deed of assignment ('the first DOA'), LLA later sold her share in the said portion to the appellants. By another DOA ('the second DOA'), both LLA and TMH assigned all their shares in Lot 380 to the respondents. The appellants and the respondents then agreed that the portion purchased by the appellants would be registered in the names of the respondents and F once the sub-division was completed, the respondents would transfer that portion to the appellants. The sub-division was approved and the two sub-titles were registered in the names of the respondents. The first appellant paid for the quit rent and premium and for re-application and registration. However, when the first appellant asked the first respondent to transfer PTD G 17330 to the appellants, the first respondent refused. In the High Court, the respondents claimed that they were the registered owners of PTD 17330 while the appellants contended that they were beneficial owners of the land and the respondents were bare trustees. The High Court Judge held (i) that when LLA unilaterally decided to sell her half undivided portion of Lot 380, she was selling only a part of the undivided share; (ii) the first DOA H contravened s. 214(1)(a) and (b) of the National Land Code ('NLC') and was therefore null and void and ineffective in passing title in that portion of Lot 380 to the appellants; and (iii) payment of quit rent and the applicable charges could not give title to the appellants in the face of the illegality of the first DOA. Hence, the present appeal.

I

Held (allowing appeal)
Per Aziah Ali JCA delivering the judgment of the court:

(1) The respondents' contention that LLA had sold half of an undivided share would be correct if it was viewed in reference to the whole undivided share purchased by LLA and TMH. However, with respect to the half undivided share which LLA herself owned, the DOA showed that LLA had assigned the whole, and not part, of the undivided share. The first DOA was valid as it had not contravened s. 214 of the NLC. (para 25)

(2) Upon acknowledgement of receipt of full payment by LLA and the surrender of all her rights, interests, benefits and occupancy of the whole of her undivided share in the portion of Lot 380, which after sub-division was known as PTD17330, the appellants became beneficial owners of LLA's half undivided share and LLA became a bare trustee for the appellants. (para 26)

(3) Although the respondents were the registered owners of PTD 17330, they had conceded that this lot did not belong to them through the testimonies of the first and second respondents. (paras 27 & 28)

Bahasa Malaysia *Translation Of Headnotes*

Rayuan ini berbangkit daripada keputusan Mahkamah Tinggi yang menolak tuntutan perayu-perayu terhadap responden-responden bagi pindah milik pemilikan sebidang tanah ('PTD 17330') kepada perayu-perayu. PTD 17330 pada asalnya merupakan sebahagian daripada sebidang tanah yang dikenali sebagai Lot 380. Low Lin Aik ('LLA') dan Tan Moi Hong ('TMH') membeli sebahagian daripada Lot 380 dan masing-masing memegang setengah bahagian yang tidak berbahagi. Melalui surat ikatan penyerahakkan ('DOA pertama'), LLA kemudian menyerahkan bahagiannya dalam bahagian tersebut kepada perayu-perayu. Melalui DOA seterusnya ('DOA kedua'), kedua-dua LLA dan TMH menyerahakkan kesemua bahagian mereka dalam Lot 380 kepada responden-responden. Perayu-perayu dan responden-responden bersetuju agar bahagian yang dibeli oleh perayu-perayu didaftarkan di bawah nama responden-responden dan apabila pecah bahagian disempurnakan, responden-responden akan memindah milik bahagian-bahagian tersebut kepada perayu-perayu. Pecah bahagian diluluskan dan kedua-dua hak milik pecah bahagian didaftarkan di bawah nama responden-responden. Perayu pertama membayar cukai tanah dan premium dan permohonan semula dan pendaftaran. Walau bagaimanapun, apabila perayu pertama meminta responden pertama memindahkan PTD 17330 kepada perayu-perayu, responden pertama enggan berbuat demikian. Dalam Mahkamah Tinggi, responden-responden mendakwa bahawa mereka merupakan pemilik-pemilik berdaftar PTD 17330 manakala perayu-perayu menghujahkan bahawa mereka adalah pemilik benefisiari dan responden-

A responden merupakan pemegang-pemegang amanah sahaja. Hakim Mahkamah Tinggi memutuskan (i) bahawa apabila LLA memutuskan secara satu pihak untuk menjual setengah bahagian Lot 380 yang tidak berbahagi, dia hanya menjual satu bahagian daripada bahagian yang tidak berbahagi; (ii) DOA pertama bertentangan dengan s. 214(1)(a) dan (b) Kanun Tanah
B Negara ('KTN') dan dengan itu, tidak sah dan batal dan tidak mempunyai kesan dalam memberikan hak milik kepada bahagian dalam Lot 380 kepada perayu-perayu; dan (iii) pembayaran cukai tanah dan caj-caj terpakai tidak memberikan perayu-perayu hak milik apabila terdapat ketaksahan dalam DOA pertama. Oleh itu, rayuan ini.

C **Diputuskan (membenarkan rayuan)**
Oleh Aziah Ali HMR menyampaikan penghakiman mahkamah:

(1) Hujahan responden-responden bahawa LLA telah menjual setengah daripada bahagian yang tidak berbahagi adalah betul jika ia dilihat berpandukan kepada kesemua bahagian yang tidak berbahagi yang dibeli
D oleh LLA dan TMH. Walau bagaimanapun, berkenaan setengah bahagian tidak berbahagi yang dimiliki oleh LLA sendiri, DOA menunjukkan bahawa LLA telah menyerahakkan kesemua, dan bukan sebahagian bahagian yang tidak berbahagi. DOA pertama adalah sah kerana ia tidak bercanggah dengan s. 214 KTN.

E
(2) Melalui pengesahan penerimaan bayaran penuh oleh LLA dan penyerahan kesemua hak-hak, kepentingan-kepentingan, faedah-faedah dan penghunian kesemua bahagian yang tidak berbahagi dalam Lot 380, yang mana selepas pecah bahagian dikenali sebagai PTD17330, perayu-perayu menjadi pemilik benefisiari setengah bahagian LLA yang tidak
F berbahagi dan LLA menjadi pemegang amanah sahaja bagi perayu-perayu.

(3) Walaupun responden-responden merupakan pemilik berdaftar PTD 17330, mereka mengaku bahawa lot ini tidak dimiliki oleh mereka melalui keterangan-keterangan responden pertama dan kedua.

G
Case(s) referred to:
Temenggong Securities Ltd & Anor v. Registrar of Titles, Johore & Ors [1974] 1 LNS 175 FC ***(refd)***
Yeong Ah Chee v. Lee Chong Hai & Anor And Other Appeals [1994] 3 CLJ 20 SC ***(refd)***

H **Legislation referred to:**
National Land Code, s. 214(1)(a), (b)

For the appellants - Mohd Faizal Ahmad; M/s Hazelin & Assocs
For the respondents - KS Pang; M/s KS Pang & Co

I *[Editor's note: For the High Court judgment, please see Tang Peng Huat & Anor v. Tan Boon Chong [2014] 1 LNS 439.]*

Reported by Najib Tamby

JUDGMENT

Aziah Ali JCA:

[1] This is an appeal against the decision of the learned judge of the High Court at Johor Bahru which had dismissed the appellants' claim against the respondents for the transfer of ownership of a piece of land known as HS(D) 4405 PTD 17330 Mukim Mersing, District of Mersing, Johor ("PTD 17330") to the appellants. The respondents are the registered owners of PTD 17330. The appellants contend that they are the beneficial owners of PTD 17330 and that the respondents are bare trustees.

[2] We had allowed the appeal with costs of RM20,000 here and below and we had set aside the order of the High Court. We allowed the reliefs prayed for in paras. 13(a), (b) and (c) of the statement of claim but we made no order on the claim for damages. We now give our reasons below. For convenience, we set out the salient facts derived from the written submissions of the learned counsel for the appellants.

Salient Facts

[3] PTD 17330 was originally part of a piece of land held under CT No. 2963 Lot 380 Mukim Mersing ("Lot 380"). By an agreement dated 14 November 1996 two persons by the name of Low Lin Aik ("LLA") and Tan Moi Hong ("TMH") purchased a portion of Lot 380 measuring 350 feet x 109 feet from five vendors. LLA and TMH each held half undivided share in the portion of Lot 380 that they had purchased.

[4] By a deed of assignment dated 30 September 1976 (exh. P1) LLA sold all her half undivided share in the said portion of Lot 380 to the appellants in equal share at the price of RM16,000. The appellants had made full payment of the purchase price to LLA.

[5] By another deed of assignment dated 19 September 1976 (exh. D7) both LLA and TMH assigned all their undivided share in Lot 380 to the respondents for a total consideration of RM15,000.

[6] According to the first appellant Tang Peng Huat (PW1), he was informed by Chong Kim (deceased), who was one of the owners of a piece of Lot 380, that Lot 380 was in the process of being sub-divided. The sub-division was handled by a legal firm by the name of Syarikat Lim Han Boon.

[7] PW1 instructed a legal firm, Messrs TS Chong & Co to notify Syarikat Lim Han Boon of the appellants' interests in Lot 380. From time to time, PW1 would meet up with Chong Kim and a surveyor, Tan Then Shoong (PW6). However, the appellants' names and LLA were not included in the application for sub-division. It was then agreed between the appellants and

the respondents that the portion purchased by the appellants would be registered in the names of the respondents and once the sub-division was completed, the respondents would transfer that portion to the appellants.

[8] The sub-division was approved on 19 June 1990. PW6 had issued a letter dated 18 May 2005 (exh. P6) to all owners of Lot 380 requesting for payment of the survey fee, preparation and layout plan amounting to RM42,821.40. It is common ground that the portion of Lot 380 held by LLA and TMH was sub-divided into two pieces of land known as HS(D) 4405 PTD 17330 ("PTD 17330") and HS(D) 4405 PTD 17331 ("PTD 17331"). The two sub-titles were registered in the names of the respondents.

[9] In exh. P6, PW6 stated that the aggregate amount due for PTD 17330 and PTD 17331 was RM2,974. PW1 paid to PW6 the sum of RM1,487, equivalent to 50% of the RM2,974, being the portion of fees payable in respect of PTD 17330.

[10] On 14 June 2005, the appellants and the respondents met with Chong Kim at his office. They were informed by Chong Kim that Form 5A had been issued by the Land Office. If payment was made, then the owners of Lot 380 would instruct the surveyor to draw up the boundaries. Later PW1 met the first respondent, Tan Boon Chong (DW1) and collected the Form 5A for Lot 17330. PW1 paid to the Land Office the sum of RM2,729 for quit rent and premium, RM10 for the plan and RM110 for re-application and registration. PW1 gave copies of the receipts to DW1.

[11] Subsequently PW1 obtained from one of the owners of Lot 380 a copy of a letter dated 26 March 2007 from the land office which showed that Lot 380 had been sub-divided and qualified titles had been issued. PW1 then went to see DW1 to ask when DW1 would transfer PTD 17330 to the appellants. DW1 informed PW1 that TMH's son, Ng Kim Hock intended to make claims over the land sold by his late mother to the respondents and also the portion sold to the appellants. PW1 paid the quit rent on Lot 17330 for the year 2009. However the respondents refused to transfer Lot 17330 to the appellants.

[12] Based on the above facts, the question before the High Court is whether the appellants have acquired any right or interest in PTD 17330 based on the deed of assignment dated 30 September 1976 entered into between them and LLA.

[13] The learned judge set out two issues for determination as follows:

(a) whether the deed of assignment dated 30 September 1976 (exh. P1) by which LLA sold all his 1/2 undivided share to the appellants is null and void and unenforceable; and

(b) whether upon execution of exh. P1, the appellants became the beneficial owners of the said 1/2 undivided share belonging to LLA.

[14] The learned judge decided the first issue by reference to s. 214(1)(a) and (b) of the National Land Code (NLC) which states as follows:

> What may be transferred, and restrictions on exercise of powers
>
> 214(1). Subject to sub-section (2), the following shall be capable of transfer under this Act:
>
> (a) the whole, but not a part only, of any alienated land;
>
> (b) the whole, but not a part only, of any undivided share in alienated land;
>
> (c) any lease of alienated land;
>
> (d) any charge; and
>
> (e) any tenancy exempt from registration.

[15] The learned judge is of the view that when LLA unilaterally decided to sell his half undivided share in the undivided portion of Lot 380, he was selling only a part of the undivided share. The learned judge found that the deed of assignment dated 30 September 1976 which purported to transfer LLA's half undivided share in the undivided share jointly owned by LLA and TMH in Lot 380 contravenes s. 214(1)(a) and (b) of the NLC. The said deed is therefore null and void and ineffective in passing title in that portion of Lot 380 to the appellants.

[16] On the second issue, the learned judge found that payment of quit rent and the applicable charges and fees could not give title to the appellants in the face of the illegality of exh. P1.

The Appeal

[17] Before us, the learned counsel for the appellants Encik Mohd Faizal Ahmad informed us that the estate of LLA had applied to intervene in this suit but the application had been dismissed and no appeal has been filed.

[18] The learned counsel for the appellants submits that the learned judge has erred in her finding that LLA had assigned only part of her undivided share to the appellants. It is submitted that cl. 1 of the deed of assignment dated 30 September 1976 (p. 127 appeal record) shows that LLA had assigned not part but the whole of her undivided share to the appellants.

[19] Clause 1 of the deed of assignment states as follows:

> 1. In consideration of the sum of Dollars Sixteen Thousand ($16,000.00) paid by the Assignees to the Assignor upon signing of these presents (the receipt whereof the Assignor hereby acknowledges), the Assignor hereby assigns all his rights interests benefits and occupancy in the said property unto the Assignees absolutely.

Therefore it is submitted that the deed of assignment between LLA and the appellants has not contravened s. 214 of the NLC and thus it is valid. The learned counsel further submits that upon payment of the full purchase price, the appellants became the beneficial owners of all the half undivided share of LLA in Lot 380 and the respondents are mere bare trustees.

[20] For the respondents, the learned counsel Mr KS Pang submits that the deed of assignment is invalid for being in contravention of s. 214 because LLA assigned only half of an undivided share and not the whole of the undivided share.

Our Decision

[21] The undisputed fact is that both LLA and TMH had bought a portion of Lot 380 measuring 350 feet x 109 feet with each owning half undivided share. There is no evidence produced to contradict the appellants' assertion that they had paid the full purchase price to LLA for the whole of her half undivided share.

[22] The deed of assignment identified the portion of land which LLA had assigned to the appellants. Clause 2 of the preamble to the deed of assignment dated 30 September 1976 states that it is marked in green in the plan annexed to the said deed.

[23] In cl. 4 of the preamble to the deed it is stated as follows:

> 4. The Assignor has agreed to assign all his rights interests benefits and occupancy in the said property to the Assignees who have agreed to accept the same upon terms and conditions hereinafter contained.

[24] Further under cl. 1 of the said deed, the assignor has assigned all her rights interests benefits and occupancy in the said property unto the assignees absolutely upon payment of $16,000 the receipt of which was acknowledged by the assignor.

[25] The learned counsel for the respondents contended that LLA had sold half of an undivided share. In our opinion this would be correct if it is viewed in reference to the whole undivided share purchased by LLA and TMH. However, with respect to the half undivided share which LLA herself owned, the deed of assignment shows that LLA has assigned the whole, and not part, of her undivided share. Therefore we find that the deed of assignment dated 30 September 1976 is valid as it has not contravened s. 214 of the NLC.

[26] In *Yeong Ah Chee @ Yan Hon Wah v. Lee Chong Hai & Anor And 13 Other Appeals* [1994] 3 CLJ 20 the Supreme Court said *inter alia* that "It is an old and well-settled rule of equity that under a valid contract for sale of land, the beneficial ownership of the land passes to the purchaser who becomes the equitable owner, the vendor having a right to the purchase

money for which he has a lien on the land ... When the full purchase price is paid, the vendor becomes a bare trustee ie, unqualified trustee for the purchaser. It is also of salutary effect to remind ourselves of the fact that rules of equity apply to this country by the Civil Law Act 1956 ... ". Thus upon acknowledgement of receipt of full payment by LLA and the surrender of all her rights interests benefits and occupancy of the whole of her undivided share in the portion of Lot 380 (which after sub-division is known as 'PTD 17330'), the appellants became beneficial owners of LLA's half undivided share and LLA became a bare trustee for the appellants. (*Temenggong Securities Ltd & Anor v. Registrar of Titles, Johore & Ors* [1974] 1 LNS 175; [1974] 2 MLJ 45).

[27] It is pertinent to note that, although the respondents are the registered owners of PTD 17330, they have conceded that this lot does not belong to them. Only lot PTD 17331 belongs to them. This is reflected in the testimony of the first respondent (DW1) who said in cross-examination as follows:

22. I put it to you that you are only entitled to one lot and not both pieces of land?

    Answer: I agree.

23. I put it to you that you have chosen PTD 17331?

    Answer: I agree.

59. I put it to you that since you only paid 1/2 portion that is RM15,000.00 for the half portion of the land under the Deed of Assignment, you should only be entitled to keep PTD 17331?

    Answer: I agree.

63. I put it to you that by your own conduct you have acknowledged that the other piece of land does not belong to you?

    Answer: I know, my Lady.

[28] The second respondent (DW2) states in his examination-in-chief that PTD 17330 belongs to LLA and he had bought only PTD 17331. The second respondent agrees that PTD 17330 does not belong to the respondents. In re-examination the second respondent states that he leaves it to the court to decide to whom the land should be given.

[29] Having considered the evidence and coupled with the respondents' own concession that PTD 17330 does not belong to them, we allowed the appeal and granted the reliefs prayed for by the appellants as stated earlier in this judgment.